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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,037	11/26/2001	Jeffrey R. Thomas	ITWO:0023	9675
7590	11/16/2005		EXAMINER	
Ralph A. Graham Fletcher, Yoder & Van Someren P.O. Box 692289 Houston, TX 77269-2289			IP, SIKYIN	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/995,037

Applicant(s)

THOMAS ET AL.

Examiner

Sikyin Ip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8,47-55,57-62,64-87 and 91-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,47-55,57-62,64-87,91-94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

## Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 8, 47-55, 57-62, 64-87, and 91-94 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of U.S. Patent No. 6727483. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed portable induction components are overlapped by portable induction components.

## Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made

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absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 47-55 and 68-78 are rejected under 35 U.S.C. § 103 as being unpatentable over USP 3403240 to Henderson in view of USP 4058696 to Antier et al and further teaching of USP 5198053 to Duncan.

The Henderson in figures 1-4 and col. 2, line 23 - col 4, line 33 discloses the features including the claimed portable induction unit with cooling except for a portable power inverter and programmable power source controller. Antier in col. 2, lines 5-44 discloses a portable power inverter which has benefit as set forth in col. 2, lines 5-11. Duncan in col. 7, lines 24-62 that using Lebtech Notebook Proportional –Integral-Derivative (PID) algorithm or any other control program with personal computer to control induction unit to produce time-temperature curve is commercially available. Programming power controlled unit is well known in the induction art for various heating. Therefore, it is contemplated within ambit of ordinary skill artisan to automate a manual control device of Henderson when technology is available to improve product quality. With respect to steps such pre-heating, post-heating, and stress relieve heating which can be done by induction heating system of Henderson. Moreover, it is well settled that a claim drawn to apparatus must distinguish over prior art in terms of structure. Ex parte Forsyth and Hancher, 151 USPQ 55, 55.

Claims 1-6, 8, 57-62, 64-67, 79-87, and 91-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claims above, and further in view of USP 5874713 to Cydzik et al.

The above said references disclose the features substantially as claimed as set forth in the rejection above except for recycling a cooling fluid. However, Cydzik in paragraph bridging col. 6 and 7 teaches recirculating fluids for cooling a coil in the same field of endeavor or the analogous metallurgical art. Therefore, it would have been obvious to one having ordinary skill in the art of the cited references at the time the invention was made to recirculate cooling fluid like car radiator when fresh cooling fluid is not immediately available. In re Venner, 120 USPQ 193 (CCPA 1958), In re LaVerne, et al., 108 USPQ 335, and In re Aller, et al., 105 USPQ 233.

### ***Response to Arguments***

Applicant's arguments filed August 31, 2005 have been fully considered but they are not persuasive.

Applicants' remarks in page 11 is noted. Applicants' attention is directed to 37 C.F.R. § 41.37( c) (v) below:

#### **§ 41.37 Appeal brief.**

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2).

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Applicants argue that cited references do not disclose a recycling cooling unit. But, Henderson discloses a cooling unit (Fig. 2 and col. 3, lines 45-65). Recycling the cooling fluid when fresh cooling fluid is not immediately available is no more than routine practice. It is contemplated within ambit of ordinary skill artisan because the portable induction brazing station coil of Henderson requires cooling.

Applicants' argument in page 17 of instant remarks is noted. But, PC/AT computers do not exclude notebook/laptop computers.

Applicants' argument as set forth in page 18 of instant remarks is noted. Applicants' attention is directed to Fig. 3 of Henderson that the portable induction unit contains caster-wheels.

Applicants argue that cited references lack the motivation to combine. But, In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Henderson in 1968 teaches a portable induction station with components such as power source, power source controller, and cooling unit. Replacing the old components with new conventional components for the same functions is contemplated within ambit of ordinary skill artisan.

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## Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The above rejection relies on the reference(s) for all the teachings expressed in the text(s) of the references and/or one of ordinary skill in the metallurgical art would have reasonably understood or implied from the text(s) of the reference(s). To emphasize certain aspect(s) of the prior art, only specific portion(s) of the text(s) have been pointed out. Each reference as a whole should be reviewed in responding to the rejection, since other sections of the same reference and/or various combination of the cited references may be relied on in future rejection(s) in view of amendment(s).

All recited limitations in the instant claims have been met by the rejections as set forth above.

Applicant is reminded that when amendment and/or revision is required, applicant should therefore provide a concise explanation and support with page and line number in the specification for any amendments made to the disclosure. See 37 C.F.R. Part §41.37 (c)(1)(v).

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## Examiner Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Ip whose telephone number is (571) 272-1241. The examiner can normally be reached on Monday to Friday from 5:30 A.M. to 2:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Roy V. King, can be reached on (571)-272-1244.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
SIKYIN IP  
PRIMARY EXAMINER  
ART UNIT 1742

S. Ip  
November 14, 2005